

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

GEORGE D. ARNESEN; JEFFREY RYAN
BRADLEY,

Plaintiffs,

v.

GINA RAIMONDO, U.S. Secretary of
Commerce; NATIONAL MARINE
FISHERIES SERVICE (NMFS); JANET
COIT, NMFS Assistant Administrator;
SAMUEL D. RAUCH III, NMFS Deputy
Assistant Administrator for Regulatory
Programs; GULF OF MEXICO FISHERY
MANAGEMENT COUNCIL; PHIL
DYSKOW, Council Member; THOMAS
FRAZER, Council Member; ROBERT GILL,
Council Member; GREG STUNZ, Council
Member; TROY WILLIAMSON, Council
Member; SUSAN BOGGS, Council Member;
JONATHAN DUGAS, Council Member;
MICHAEL MCDERMOTT, Council Member;
DALE DIAZ, Council Member; SCOTT
BANNON, Council Member; KEVIN ANSON,
Council Member designee; PATRICK
BANKS, Council Member; CHRIS
SCHIEBLE, Council Member designee;
JESSICA MCCAWLEY, Council Member;
CHRISTOPHER SWEETMAN, Council
Member; ROBIN RIECHERS, Council
Member; DAKUS GEESLIN, Council
Member designee; GEN. JOE SPRAGGINS,
Council Member; RICK BURRIS, Council
Member designee; ANDY STRELCHECK,
Council Member and NMFS Regional
Administrator,

Defendants.

No. 1:23-cv-00145-TBM-RPM

KAREN BELL; A.P. BELL FISH COMPANY,
INC.; and WILLIAM COPELAND,

Plaintiffs,

v.

GINA RAIMONDO, in her official capacity
as Secretary of the United States Department
of Commerce; JANET COIT, in her official
capacity as Assistant Administrator for the
National Marine Fisheries Service; and
NATIONAL MARINE FISHERIES SERVICE,

Defendants.

No. 1:23-cv-00160-HSO-BWR

MOTION TO CONSOLIDATE

Pursuant to Federal Rule of Civil Procedure 42(a), the *Bell* Plaintiffs respectfully request that the Court consolidate *Bell v. Raimondo*, No. 23-cv-0160-HSO-BWR (S.D. Miss.), with *Arnesen v. Raimondo*, No. 23-cv-0145-TBM-RPM (S.D. Miss.).¹ This motion was previously noticed before Judge McNeel as the judge presiding over the action with the lower docket number, but filed in *Bell* and not *Arnesen*, as directed by the clerk's office. It is now refiled in the *Arnesen* docket in compliance with the July 26, 2023, Text Order in *Bell*.²

¹ Due to the simplicity and straightforward nature of the requested relief, Plaintiffs request that the Court grant leave of compliance of filing a separate memorandum brief in support under Local Civil Rule 7(b)(4).

² The text order reads:

TEXT ONLY ORDER denying Plaintiffs' Motion [7] to Consolidate pursuant to Local Uniform Civil Rule 42. According to Local Rule 42, "In civil actions consolidated under Fed. R. Civ. P. 42(a), the action bearing the lower or lowest docket number will control the designation of the district or magistrate judge before whom the motion to consolidate is

The *Bell* Plaintiffs had contacted government counsel in *Arnesen* regarding this motion (counsel for the *Bell* Defendants had, and have, not yet appeared). *Arnesen* government counsel indicated that the government takes no position on this motion. The *Bell* Plaintiffs will formally serve the *Bell* Defendants by mail.

Federal Rule of Civil Procedure 42(a) provides:

If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

The purpose of consolidation is to achieve judicial convenience and economy by expediting proceedings and avoiding duplicate proceedings. See *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496–97 (1933). The decision to consolidate is within the district court’s sound discretion. *NAACP of La. v. Michot*, 480 F.2d 547, 548 (5th Cir. 1973) (per curiam). However, “[t]rial judges are urged to make good use of Rule 42(a) of the Federal Rules of Civil Procedure where there is involved a common question of fact and law as to the liability of the defendant in order to expedite the trial and eliminate unnecessary repetition and confusion[.]” *Dupont v. S. Pac. Co.*, 366 F.2d 193, 195 (5th Cir. 1966).

Those factors favor consolidation here. *Bell* and *Arnesen* present common questions of law and fact. Both cases challenge the same administrative action,

noticed.” The Motion to Consolidate should therefore be filed in the action with the lower docket number. Here, the lower docket number is 1:23-cv-145-TBM-RPM, not 1:23-cv-160-HSO-BWR. NO FURTHER ORDER WILL ISSUE. Signed by Magistrate Judge Bradley W. Rath on 7/26/2023 (rjc) (Entered: 07/26/2023)

namely the final rule implementing a regulatory measure known as Amendment 54 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, which reduces the amount of greater amberjack available to commercial fishermen. *See* 88 Fed. Reg. 39,193 (June 15, 2023). Both cases seek declaratory and injunctive relief against the rule. *Bell*, Docket No. 1, Prayer for Relief (“*Bell* Compl.”); *Arnesen*, Docket No. 1, Prayer for Relief (“*Arnesen* Compl.”).

In *Bell*, the only claim is that the rule and Amendment 54 were adopted by individuals whose appointments to the Gulf of Mexico Fishery Management Council, a federal policymaking body, violated the Appointments Clause. *Bell* Compl. ¶¶ 59–72. That is, in essence, also the lead claim in *Arnesen*. *Arnesen* Compl. ¶¶ 137–48. The administrative record on which these claims will be resolved is identical. *See* 5 U.S.C. § 706 (providing that review will be upon the “whole record” of the agency’s decision).

Finally, the cases are at the same stage, having been filed 14 days apart. *Cf.* *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 762 (5th Cir. 1989) (holding that the district court acted within its discretion in denying consolidation where one case was ready for trial and the other was not).

Because of these significant overlaps between the two cases, consolidation will promote judicial economy and efficiency. If the cases are not consolidated, the government will be required to undertake potentially duplicative briefing in the two cases, and the Court will have to resolve the cases separately. Consolidation would

avoid this duplication of effort and waste of judicial resources, as well as avoid potentially inconsistent judgments in the two cases.

Consolidation also will not prejudice any party. In particular, consolidation would not prejudice the motion for preliminary injunction filed in *Arnesen*, which may be briefed and decided on its existing schedule even after consolidation. Indeed, consolidation does not require that any briefing schedules be identical; if desirable, the Court may order different briefing schedules and manage the cases separately. Consolidation would simply enable judicial efficiency and economy by allowing the Court to coordinate the cases.

For these reasons, the *Bell* Plaintiffs respectfully request that the Court consolidate *Bell* with *Arnesen*.

Dated: July 27, 2023.

Respectfully submitted,

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Certificate of Service

I hereby certify that on the 27th day of July, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Those that are registered with the Court's CM/ECF system will receive the foregoing via a Notice of Electronic Filing. A copy will be mailed to the *Bell* Defendants via first-class U.S. Mail, postage prepaid, on July 27, 2023:

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